An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-354

No. COA21-617

Filed 17 May 2022

Stokes County, No. 19 JA 79

IN THE MATTER OF: J.W.M.

Appeal by Respondent from Order of Adjudication and Order of Disposition entered 19 July 2021 by Judge Marion Boone in Stokes County District Court. Heard in the Court of Appeals on 27 April 2022.

Kimberly Connor Benton for Respondent-Appellant Father.

Leslie Rawls for Stokes County Department of Social Services.

James N. Freeman, Jr. for guardian ad litem.

DILLON, Judge.

¶ 1 This matter concerns the adjudication of J.W.M. ("Son") as a neglected juvenile and the subsequent disposition order. Respondent, Son's father, ("Father") appeals.

I. Background

¶ 2 The orders at issue are based on a series of events beginning on 4 September 2020 and continuing until early the next morning, which resulted in a law enforcement report to the Stokes County Department of Social Services ("DSS").

¶ 3 At the time of this incident, Son was living with Father. On the day in question, Father went to a gathering at a friend's house and brought Son. Father was aware that his friend was recently released from a drug rehabilitation facility. Throughout the five or six hours of the gathering, Father drank with the group.

¶ 4 Around 1:00 a.m., Father and his friend got into an argument which prompted Father to leave the residence. Father took Son to his car, placed him in the passenger seat, and went back inside, breaking the glass storm door on his way in. Returning to the car, Father removed his gun from the glove box and placed it on the console, between himself and Son.

¶ 5 Before Father drove away, Father's friend approached the car with a rifle and broke the passenger side window. Father got out of the driver's seat with his loaded gun and attempted to convince his friend to drop the rifle. A scuffle ensued, which resulted in Father being shot in the leg, all of which occurred in Son's presence. Father's blood alcohol content ("BAC") was later discovered to be nearly twice the legal limit.

¶ 6 Law enforcement arrived and removed Son from the car. Son was crying and had urinated on himself. Son was not permitted to leave with Father from the scene and was eventually placed in the custody of DSS.

¶ 7 DSS filed a petition alleging Son to be neglected, based on this incident. After a hearing on the matter, the trial court found Son to be neglected and entered a disposition order. Father timely appealed.

II. Analysis

¶ 8 Father makes a number of arguments concerning the adjudication order and subsequent disposition order, which we address in turn.

A. Neglect Adjudication

¶ 9 Father argues that the findings in the adjudication order do not support the trial court's determination that Son is a neglected juvenile.

¶ 10 In reviewing a trial court's adjudication, we are instructed "to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984). "Unchallenged findings of fact are deemed supported by competent evidence and are binding on appeal." *In re J.S.*, 374 N.C. 811, 814, 845 S.E.2d 66, 71 (2020). The conclusion that a juvenile is abused, neglected, or dependent is reviewed *de novo*. *In re N.G.*, 186 N.C. App. 1, 13, 650 S.E.2d 45, 53 (2007), *aff'd per curiam*, 362 N.C. 229, 657 S.E.2d 355 (2008).

¶ 11 A neglected juvenile is one whose parent "does not provide proper care [or] supervision[.]" N.C. Gen. Stat. § 7B-101(15) (2021). "In order to adjudicate a juvenile

neglected, our courts have additionally required that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care [or] supervision[.]" *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003). This court evaluates a parent's conduct when making a neglect determination on a case-by-case basis considering the totality of the evidence. *Speagle v. Seitz*, 354 N.C. 525, 531 557 S.E.2d 83, 86 (2001).

¶ 12 Father argues that the findings, which concern only the events described above, are insufficient to support a determination of neglect. We disagree.

¶ 13 Though the findings concern events which occurred during the course of a single night, they show that Father placed Son at risk in several ways. Specifically, over the course of several hours (1) Father was preparing to operate his vehicle with his BAC twice the legal limit with Son in the car; (2) he shattered his friend's glass door upon reentry of the residence, an act which was likely to cause and which did cause a violent response from his friend; (3) he placed a loaded handgun inside the car while Son was sitting in the passenger seat; (4) he exposed Son to heavily intoxicated adults for a number of hours; (5) he entered an armed fight with his friend in front of Son; and (6) as a result, he was shot in Son's presence.

¶ 14 We conclude that the trial court's findings are sufficient to support its adjudication order.

B. Disposition Order

¶ 15 Father makes arguments concerning the disposition order.

¶ 16 Following an adjudication of neglect, "the district court has broad discretion to fashion a disposition from the prescribed alternatives in N.C. Gen. Stat. § 7B-903(a), based upon the best interests of the child." *In re B.W.*, 190 N.C. App. 328, 336, 665 S.E.2d 462, 467 (2008). "All dispositional orders of the trial court after abuse, neglect and dependency hearings must contain findings of fact based upon the credible evidence presented at the hearing." *In re Weiler*, 158 N.C. App. 473, 477, 581 S.E.2d 134, 137 (2003). We review a dispositional order only for abuse of discretion. *In re Pittman*, 149 N.C. App. 756, 766, 561 S.E.2d 560, 567 (2002).

1. Best Interest of the Child

¶ 17 Father argues that the trial court incorrectly applied the best interest of the child standard when it awarded temporary custody of Son to DSS. Specifically, Father argues that the trial court should have engaged in an analysis of Father's constitutional rights as Son's parent. We disagree.

¶ 18 There is a substantive difference between the proof required of neglect for purposes of temporarily removing a child from a parent's custody, as occurred here, and for purposes of terminating one's parental rights permanently. *See In re Evans*, 81 N.C. App. 449, 344 S.E.2d 325 (1986). When considering whether to grant

temporary custody to DSS, "[t]he determinative factors must be the best interests of the child and the fitness of the parent to care for the child at the time of the [adjudication] proceeding." *In re Brim*, 139 N.C. App. 733, 742, 535 S.E.2d 367, 372 (2000).

¶ 19 Father, however, cites cases referring to the termination of parental rights, rather than temporary removal. His argument is meritless. We conclude that the current arrangement with DSS as ordered by the trial court is in compliance with North Carolina law. The trial court did not grant DSS or any other third-party permanent custody of Son. In fact, in the Disposition Order, the trial court indicated "the permanent plan for the juvenile is reunification." The trial court never contemplated permanent custody of Son to be taken from Father.

2. DSS Case Plan

¶ 20 In its disposition, the trial court did not expressly recite a case plan, but rather referenced a case plan that was placed into evidence by DSS at the hearing. Father argues that the trial court, in effect, improperly delegated its discretion to DSS regarding the appropriate case plan.

¶ 21 N.C. Gen. Stat. § 7B-904(d1)(3) allows the trial court to order that parents "take appropriate steps to remedy conditions in the home that led to or contributed to the juvenile's adjudication." *Id.* In drafting Section 903(d1)(3), our "General

Assembly clearly contemplated that, in the event that a juvenile is found to have been abused, neglected, or dependent, the trial judge has the authority to order a parent to take any step needed to remediate the conditions that 'led to or contributed to' either the juvenile's adjudication or the decision to divest the parent of custody." *In re B.O.A.*, 372 N.C. 372, 381, 831 S.E.2d 305, 312 (2019) (quoting N.C. Gen. Stat. § 7B-904(d1)(3)).

¶ 22 Father relies upon an unpublished case to argue that the trial court may not delegate its dispositional authority. Father is correct that the delegation of dispositional authority is not permitted. However, the case relied upon is distinguishable from this case. In the unpublished case, the court ordered a parent "to comply with her Family Services Agreement when no Agreement was entered into evidence at the dispositional hearing." *In re L.M.*, 2015 N.C. App. LEXIS 1014, *12. "By not having the Agreement submitted into evidence, the trial court could not order the respondent to comply with the Agreement." *Id.* at *13.

¶ 23 However, the case plan referenced in the trial court's order in the case at bar was placed into evidence at the dispositional hearing. When the trial court ordered Father to "enter into his case plan immediately," it was clearly referring to the case plan that had been entered into evidence at the dispositional hearing. We, therefore, conclude that the trial court did not delegate its dispositional authority.

3. Costs of Visitation

¶ 24 Father next argues that the trial court erred when it ordered him to enter a visitation schedule without making any findings regarding whether he was able to pay for such visitation. We agree.

¶ 25 Our Supreme Court has remanded orders requiring visitation in circumstances in which "[t]he district court made no findings whether respondent mother was able to pay for supervised visitation once ordered, [stating that] [w]ithout such findings, our appellate courts are unable to determine if the trial court abused its discretion by requiring as a condition of visitation that visits with the children be at respondent['s] expense." *In re J.C.*, 368 N.C. 89, 89, 772 S.E.2d 465, 465 (2015).

¶ 26 The trial court assigned Father a visitation schedule but made no mention of the assignment of costs for the visits. We conclude that the court erred in this regard.

¶ 27 We remand for further proceedings to make findings and assign costs of visitation.

III. Conclusion

¶ 28 We conclude that the trial court erred by failing to make findings in its disposition order concerning the assignment of the costs with respect to Father's visitation with Son. We remand the matter for findings concerning the costs of visitation and, otherwise, affirm the Order in all other respects. The trial court is not

required to, but may take additional evidence on the issue of assigning the costs of visitation if necessary.

AFFIRMED IN PART, REMANDED.

Judges ZACHARY and CARPENTER concur.

Report per Rule 30(e).